

UNITED STATES OF AMERICA  
DEPARTMENT OF LABOR  
MINE SAFETY AND HEALTH ADMINISTRATION  
PART 75-LOW-AND MEDIUM-VOLTAGE  
DIESEL POWERED ELECTRICAL GENERATORS  
PROPOSED RULE

+ + + + +

HEARING

+ + + + +

TUESDAY,

NOVEMBER 30TH, 2004

The Hearing was held at 12:30 p.m., at  
the Radisson Hotel, 2 Waterfront Plaza, Morgantown,  
West Virginia, Marvin Nichols, Mediator, presiding.

PANEL:

MARVIN NICHOLS            Mediator  
ARLIE MASSEY  
ROBERT PHILLIPS  
RONALD FORD  
MICHELLE CURRAN

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P-R-O-C-E-E-D-I-N-G-S

12:26 p.m.

MR. NICHOLS: Good afternoon, everybody.

My name is Marvin Nichols, and I'm the Director of the Office of Standards for MSHA. On behalf of David Dye, the Acting Assistant Secretary of Labor for Mine Safety and Health, I want to welcome all of you here to this public hearing today.

This is the fourth and final public hearing on the Proposed Rule to address the use of low and medium voltage diesel powered generators. We held hearings on November the 4th, in Salt Lake City, Utah; November the 16th in Birmingham, Alabama; and November the 18th in Lexington, Kentucky.

The purpose of these hearings is to obtain input from the public on a Proposed Rule that was published in the Federal Register on June 25th, 2004. That rule would allow the use of low and medium voltage diesel powered generators as an alternative means of powering electrical equipment.

The generators are portable and are used to power electrical equipment in, out, and around underground coal mines. Copies of the Federal Register Notice contained in the Proposed Rule are

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1 available at the registration table.

2 Let me take a minute to introduce my MSHA  
3 colleagues up here. To my left is Bob Phillips. Bob  
4 is a health and safety specialist in coal mine safety  
5 and health, headquarters office.

6 Next to Bob is Larry Cook. Larry is a  
7 supervisory electrical engineer in Mount Hope, West  
8 Virginia District. And at the end of the table is  
9 Michelle Curran. Michelle is an attorney in our  
10 Solicitor's office.

11 To my right is Arlie Massie. Arlie is an  
12 electrical engineer in the Approval and Certification  
13 Center. And next to Arlie is Ron Ford, who is an  
14 economist in the Standards Office. And Pam King is  
15 back at our registration table. Pam is a regulatory  
16 specialist in the Office of Standards, in our  
17 headquarters office.

18 This hearing is being held in accordance  
19 with Section 101 of the Federal Mine Safety and  
20 Health Act of 1977. As is the practice of MSHA,  
21 formal rules of evidence will not apply. Therefore  
22 cross examination of hearing panel members will not  
23 be allowed. But the panel may explain and clarify  
24 provisions of the Proposed Rule.

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1           Those of you who have notified us, in  
2 advance, of your intent to speak will be allowed to  
3 make your presentations first, and I will call the  
4 speakers in order that the requests were made.

5           Following these presentations other who  
6 request an opportunity to speak will be allowed to do  
7 so. We invite all interested parties to present  
8 their views at this hearing. And if you are sitting  
9 in the audience now, and wish to speak, we would like  
10 for you to sign in at the registration table.

11           We will remain in session, today, until  
12 everyone who desires to speak has an opportunity to  
13 do so. Also, if you are not speaking, we would  
14 request that you sign the attendance sheet so we have  
15 an accurate record of attendance for today's hearing.

16           We will accept written comments and  
17 information at this hearing from any interested  
18 party, including those who are not speaking. And  
19 when I call on you to speak please come to the  
20 speaker's table and begin your presentation by  
21 identifying yourself, and your affiliation, for the  
22 record.

23           If you have a prepared statement, or any  
24 supporting documents that you would like to submit,

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1 for the record, leave a copy with us here today. You  
2 can give written comments on this hearing today, or  
3 you can send them to MSHA's Office of Standards  
4 electronically, by facsimile, by regular mail, or  
5 hand carry using the address information in the  
6 Federal Register notice.

7 The post-hearing comment period on this  
8 Proposed Rule will end on December 10th, 2004, and  
9 submissions must be received by that date. A  
10 verbatim transcript of this hearing will be made part  
11 of the public record, and it will be posted on MSHA's  
12 website.

13 If you would like a copy sooner you can  
14 make your own arrangements with the Court Reporter,  
15 and we have the Court Reporter's company information  
16 at the registration table.

17 Before the speakers begin their testimony  
18 I would like to give you some background on the  
19 Proposed Rule we are addressing today. Currently  
20 Title 30 of the Code of Federal Regulations, Section  
21 75.701, and Section 75.901, established the grounding  
22 requirements for electrical equipment and low and  
23 medium voltage three phase circuits.

24 Over the last 13 years mine operators

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1 have been using portable low and medium voltage  
2 diesel powered electric generators as an efficient  
3 means for providing a portable source of power to  
4 move electrical equipment.

5 However, when using these generators mine  
6 operators are unable to comply with the electric  
7 protection requirements of both of these standards.  
8 To address their inability to comply mine operators  
9 have requested petitions for modifications from  
10 existing MSHA standards.

11 From January 1990, through October of  
12 2003, there were 63 petitions requested and granted  
13 under 75.701 and 75.901, affecting 56 underground  
14 coal mines.

15 We may grant a petition for modification  
16 of an existing standard, as long as the alternative  
17 method proposed by the mine operator achieves the  
18 same measure of protection afforded miners at all  
19 times under the existing standard, or the application  
20 of the existing standard reduces safety to miners.

21 When MSHA grants a petition for  
22 modification it applies only to the individual mine.

23 Before we granted these petitions we evaluated the  
24 use of diesel powered electric generator equipment.

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1 We recognized that diesel powered electrical  
2 generator with sensitive electrical circuit  
3 protections reduces fire, explosion, and shock  
4 hazards.

5 When we granted the petitions we  
6 included, in the approval, the requirements that the  
7 operator must follow to maintain the protection  
8 afforded by existing standards.

9 The three major provisions of the  
10 Proposed Rule would require, one, the grounding  
11 resistor to limit ground fault current to 0.5 amperes  
12 under a ground fault condition.

13 Two, the grounded phase protection device  
14 to cause the circuit interrupting device protecting  
15 the electrical circuits to open and shut down the  
16 diesel powered generator when not more than 90  
17 milliamperes of fault current is detected by the  
18 system.

19 And three, the use of equipment testing  
20 devices and procedures that are designed to  
21 facilitate safe testing of the diesel powered  
22 electrical circuit prior to moving piece of equipment  
23 or performing work.

24 We believe that this Proposed Rule

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1 increases miner safety by limiting the amount of  
2 voltage and current that miners can be exposed to  
3 under a ground fault condition and, by reducing the  
4 possibility of a fire, shock, or burn hazard through  
5 the safety features for personnel and equipment  
6 required by the standards.

7 Our first presenter is Timothy Cox with  
8 the UMWA.

9 MR. COX: How are you doing today?

10 MR. NICHOLS: Okay, how are you doing?

11 MR. COX: Timothy Cox, Local Union 9909,  
12 safety committeeman. I oppose the diesel generator  
13 regulation proposed to you for a couple of reasons.

14 It is not under all the other diesel, it  
15 is all under all the other generators in MSHA. Well,  
16 we can't figure that one out. Second, I don't like  
17 anything that is not connected to earth ground.

18 Where you gentlemen are electrical  
19 engineers, you can't hook a generator out here up  
20 unless it has its own separate ground. From  
21 Allegheny Power, whoever, you have a generator to run  
22 your home it has to be hooked up to earth ground.

23 And that is our biggest concern, they got  
24 these guys coming up with these new cables, and when

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1 it kills 15 or 20 men then we will be back in front  
2 of you again, and that is the wrong way to go about  
3 this. Diesel generators are not the way to help  
4 the operator get the piece of equipment to the face.

5 I don't know what is, but I know that I believe it  
6 to be an unsafe condition that is going to happen.

7 Because you gentlemen know, up there,  
8 that things in the mines get left unattended. Just  
9 like when we first got rubber tired gateless  
10 boulders, and today we have fletcher boulders. And  
11 today we have battery powered tractors that are  
12 continually being neglected, as well Diesel  
13 generators will be neglected and cause a serious  
14 problem. Thank you.

15 MR. NICHOLS: Thank you. Any questions  
16 for Timothy?

17 (No response.)

18 MR. NICHOLS: Thanks. The next presenter  
19 will be Tim Baker of UMWA.

20 MR. BAKER: My name is Tim Baker, I'm  
21 deputy administrator for occupational health and  
22 safety for the mine workers. I will keep my comments  
23 brief because, to be quite honest with you, our  
24 opposition to the Proposed Rule is complete.

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1 I mean, we are looking at a situation  
2 where we do not support any aspect of the rule.  
3 However, I would like to say that given that, and  
4 given the high powered, or high voltage Diesel  
5 generator, basically the rule within the continuous  
6 mining machinery, which should be placed in here, and  
7 we can attack all those things at the same time,  
8 those are all germane issues, and all connected  
9 together, diesel generators, we will deal with the  
10 voltages together.

11 But we would like to see those things,  
12 that pulled out of that rule, put in here, and we can  
13 attack it all at the same time.

14 The purpose, from our understanding, the  
15 purpose of the Proposed Rule for low and medium  
16 diesel powered generators is to allow operators to  
17 tram equipment in and out of the mine and from  
18 section to section, and also to do out-by work where  
19 they believe it is necessary, and then they wouldn't  
20 have to drag a distribution box, or a power center,  
21 or whatever the case may be, into an area to do that.

22 This poses, in our opinion, several  
23 problems with regard to health and safety. Currently  
24 the use of diesel powered equipment in underground

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1 mines, which is more severely restricted, I think, in  
2 a state by state basis than as MSHA would look at it,  
3 requires that there be an individual on this  
4 equipment.

5 I mean, we are basically talking whether  
6 it is diesel powered ram cars, or transportation in  
7 and out of the mine, or whether it is a scoop, or  
8 whatever it is, somebody has to be on that piece of  
9 equipment to run it.

10 And when they are not on that piece of  
11 equipment then that piece of equipment is turned off  
12 and taken out of service. One of the major concerns  
13 we have here is that that is not necessarily the case  
14 with what we are dealing with here.

15 If I'm working in an outby area, and I  
16 have a rock loader, and a shuttle car, and I'm  
17 powering those two pieces of equipment up to clean up  
18 a cave, or whatever the case may be, I can go in at  
19 the beginning of my shift and turn that diesel  
20 powered generator on, and walk away from that, you  
21 know, 8, 10, 12 breaks whatever it may be, and work  
22 on this cave.

23 Leaving a piece of diesel powered  
24 equipment unattended, in those conditions, is in our

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1 opinion unacceptable. The hazards that that poses  
2 for the overheating of the equipment, shock hazards  
3 that are presented by the equipment itself, and  
4 several other issues, just are not acceptable to the  
5 union.

6 Obviously there is the clear risk of the  
7 diesel particulate matter, and the diesel fumes that  
8 are being blown throughout the coal mine. If I'm  
9 working in an area outby those things have to travel  
10 somewhere and, obviously, that is generally going to  
11 be inby, at least to some degree.

12 The other thing that concerns us greatly  
13 is, despite the fact that there is a requirement for  
14 a grounding resistor this is not a grounded system  
15 based on what general understanding of grounding is  
16 in the mining industry.

17 I spoke about this briefly in Lexington  
18 but what we deal with, in the mining industry, is  
19 specifically a ground to earth. And it is an  
20 intentional connection to the earth, okay?

21 Whether we are powering the piece of  
22 equipment outby, or attaching this, and I'm still  
23 trying to get this straight in my own mind, if I'm  
24 putting a generator on a cart, and attaching that

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1 with some kind of a tow bar to a miner, there is no  
2 grounding system there, at all.

3 This, I think, lends itself to what would  
4 normally be considered a floating system where, you  
5 know, you hope that the grounding resistor functions  
6 as it should. But if you get a fluctuation in phase  
7 power, which does routinely happen, if you drop a  
8 phase in there, and the grounding resistor doesn't  
9 act as it should, the individual then becomes the  
10 ground.

11 And we see this as an extremely distinct  
12 threat. The equipment that we currently run, whether  
13 that is 480 volts, or today talking about 240 volt  
14 miners, those systems all go back to a grounding bed  
15 at some point.

16 This system would not. Now, we realize  
17 that there are many of these systems out there but  
18 evaluation given that, you know, we can't endorse the  
19 application of diesel powered generator in the  
20 underground setting, and we take that position.

21 Outside of that I guess there is no real  
22 necessity to get into a whole lot of detail beyond  
23 that, as far as we are concerned, because the  
24 opposition is clearly for the entire rule. But I

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1 would be happy to entertain any questions that you  
2 may have.

3 MR. NICHOLS: The panel can correct me if  
4 I'm wrong but as I mentioned in my opening statement,  
5 we have 13 years experience on this and have granted  
6 63 petitions at 56 underground coal mines.

7 And, to my knowledge, these systems have  
8 operated without incident. Is that correct?

9 MR. PHILLIPS: That is correct.

10 MR. NICHOLS: So what do you think about  
11 that?

12 MR. BAKER: Well, you know, I think it  
13 depends on where the systems are at. I think that a  
14 proliferation of these systems is not going to be  
15 beneficial within the industry.

16 MR. NICHOLS: What practical way are you  
17 going to, what practical approach are you going to  
18 use to move this equipment?

19 MR. BAKER: The same practical approach  
20 that they used at R&P when I worked underground there  
21 for 15 years; the same practical approach that they  
22 continue to use in a lot of these Consol and Peabody  
23 operations in this area.

24 If you are going to move a piece of

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1 equipment you find yourself a distribution box, you  
2 take it where you need it, you plug it in, and you go  
3 from there.

4 MR. NICHOLS: Is that practical?

5 MR. BAKER: It may not be economically  
6 what the company wants to do, but that is practical.

7 That is a grounded system, that is a completely  
8 grounded system.

9 MR. NICHOLS: How much experience do you  
10 think you need, with any situation, to determine that  
11 this might be okay? I mean, we have pretty good  
12 experience here with this.

13 MR. BAKER: Well, and you know, I'm not  
14 exactly sure, Marvin. Because I can go to  
15 Pennsylvania tomorrow and talk with Allen Davis, who  
16 has years and years of experience with electric, he  
17 is an electrical engineer for the State of  
18 Pennsylvania.

19 And he has clearly told me, I'm not  
20 bringing those pieces of equipment in my coal mines,  
21 in this state. They just absolutely will not bring  
22 those generators here, I will not permit them to do  
23 it. And that is what he has told me.

24 So he has a lot of experience and he is

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1 telling me this is an unsafe system, this is a system  
2 you should not have proliferated within the mining  
3 industry. And that is what he has told me.

4 And, you know, obviously he has a lot  
5 more electrical experience than I do.

6 MR. NICHOLS: Well, it just seems a  
7 little surprising to me that after, you know,  
8 petition after petition, after petition, that this  
9 would appear to be okay, and then we meet resistance  
10 when we just want to do --

11 MR. BAKER: Well, you know, I think there  
12 is actually two levels of resistance. First of all,  
13 you know, part of that is my fault because, as I said  
14 in Lexington, I was unaware that these systems  
15 existed.

16 And even though I have been told today  
17 that we have eight in UMWA operations, that is my  
18 fault, and I will accept that. But I think when we  
19 look at, as we become educated to it, and we become  
20 opposed on several levels.

21 First of all, it is not just the  
22 generator itself, it is the diesel emissions that you  
23 are going to be giving out. It is the potential for  
24 heating. And you know what? You may have 56

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1 petitions, I'm absolutely certain there are not that  
2 many diesel generators out there, because I saw how  
3 many were revoked. So you have fewer than that in  
4 operation, that becomes clear.

5 And those petitions, and those  
6 individuals, or those inspectors, may be on top of  
7 that. I believe you proliferate this around the coal  
8 mining community and you are not going to have that  
9 same handle on those pieces of equipment. I think  
10 that is the nature of the beast.

11 I think that you set yourself up for a  
12 major problem, and we are just looking to avoid that  
13 problem. And the other thing that I think, and maybe  
14 I shouldn't feel this way, but I get a little  
15 irritated about it, as I read through two separate  
16 rules, but they both contain diesel generators in  
17 them, when it all should have been in one, it all  
18 should have been in here.

19 And I saw that kind of as maybe a flag.  
20 And I know last time you said to me sometimes, Tim,  
21 you are just suspicious. You know, working 15 years  
22 for R&P Coal I have the right to be suspicious about  
23 how they operate.

24 And I'm not saying that anybody on the

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1 panel up here is necessarily trying to do something  
2 that they don't believe this to be correct and safe.

3 I'm saying that we don't believe it to be correct  
4 and safe. And we have to make our points based on  
5 what we believe to be in the best interest of the  
6 mining community from our position.

7 MR. NICHOLS: Well, you can't be  
8 surprised that these things are in use. I mean,  
9 whether it is a UMWA mine, or a non-union mine, you  
10 guys see a copy of every petition published. And we  
11 have published 63 of them.

12 MR. BAKER: We generally see most of  
13 those petitions. I had not seen, until this rule  
14 came out, I had not personally seen a single petition  
15 on a diesel powered generator.

16 MR. NICHOLS: Okay. Anybody else?

17 MR. COOK: Tim, this is Larry Cook. Are  
18 you going to submit written comments on this rule?

19 MR. BAKER: Yes, yes, I will by the 10th.

20 MR. COOK: I know you said you were  
21 specifically going to with the high voltage. Be sure  
22 you do the same thing with this one.

23 MR. BAKER: Yes, I will, I will.

24 MR. MASSEY: Are your comments, that you

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1 are going to submit in writing, going to explain how  
2 you see shock hazards for this equipment, and you  
3 don't see shock hazards on equipment that is earth  
4 grounded?

5 MR. BAKER: Well, yes. I guess there  
6 will be a differentiation. I'm not saying that we  
7 don't see shock hazards on earth grounded equipment.  
8 I'm just saying that we see the potential is greater  
9 here, in this instance.

10 MR. MASSEY: So your comments will  
11 explain why it is greater?

12 MR. BAKER: Yes.

13 MR. MASSEY: Okay.

14 MR. NICHOLS: Okay, Tim, thanks.

15 MR. BAKER: Thank you.

16 MR. NICHOLS: Is there anyone else in the  
17 audience that would like to give comments on the  
18 portable diesel generator rule?

19 (No response.)

20 MR. NICHOLS: Okay. What we will do,  
21 since the Federal Register Notice said that this  
22 Hearing would start at 1 o'clock, we will go off the  
23 record, we will go back on at one, we will hang  
24 around from one to two, and if we get no additional

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1 commenters then we will close the record. Thanks.

2 (Whereupon, the above-entitled matter went off  
3 the record at 12:46 p.m. and went back  
4 on the record at 1:00 p.m.)

5 MR. NICHOLS: This is Marvin Nichols, we  
6 are back on the record for the portable diesel  
7 generator rule. It is about one o'clock. We do not  
8 have anyone in attendance to give comments. We will  
9 go off the record and come back on at two.

10 (Whereupon, the above-entitled matter went off  
11 the record at 1:00 p.m. and went back on  
12 the record at 2:00 p.m.)

13 MR. NICHOLS: This is Marvin Nichols. It  
14 is about two o'clock and the panel is here to take  
15 comments. However, we have no commenters, so we are  
16 going to close the record on portable diesel  
17 generators.

18 (Whereupon, at 2:01 p.m., the above-  
19 entitled matter was concluded.)

20  
21  
22  
23  
24